



AN INUIT PETITION TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS FOR DANGEROUS IMPACTS OF CLIMATE CHANGE

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The United States, the world's largest emitter of greenhouse gases, has refused to take meaningful action to curtail its emissions. Climate change caused by these emissions has already had dangerous impacts in many regions of the world, most notably the Arctic. These impacts have proven particularly damaging for the Inuit and other people of the Arctic. It is not an exaggeration to say that the impacts are of such a magnitude that they ultimately could destroy the ancient Inuit culture. Many of the dangers currently facing the Inuit—retreat of protective sea ice, impaired access to vital resources, loss of homes and other infrastructure—rise to the level of human rights violations.

Only two international human rights regimes are available to bring a complaint against the United States for causing dangerous climate change and violating the rights of the Inuit people: the U.N. Human Rights System and the Inter-American Human Rights System within the Organization of American States (OAS). The OAS system provides a preferable forum for several reasons: it is receptive to claims by private citizens, it is often progressive and innovative in interpreting and applying human rights law, it takes note of new developments in other human rights systems, and its interpretation of the rights within its purview seems favorable to such a claim. A petition by the Inuit to the Inter-American Commission on Human Rights (IACHR) against the United States would be viable because it would be brought by a group of persons that reside in the Americas and by a nongovernmental entity legally recognized in a Member State of the OAS.

THE PLIGHT OF THE INUIT

Massive changes occurring in the Arctic as a result of human emissions of greenhouse gases are causing dangerous impacts on the Inuit and other indigenous people of the Arctic. These communities live as their ancestors have for eons, relying on their ability to hunt and fish for sustenance. Indigenous Arctic people depend on polar bear, walrus, seals, caribou and other species, not only for food, but as the foundation of their cultural identity. As sea ice retreats and ecosystems shift, access to vital resources becomes more and more difficult. Weather becomes unpredictable and the ice itself becomes hard to read, even for the most experienced hunters. To gather the resources they need, hunters must increasingly put their own safety at risk.

Inuit villages have been badly damaged by the retreat of sea ice and thawing of permafrost caused by global warming. In Shishmaref, Alaska, a small Inuit village in the Chukchi Sea, seven houses have had to be relocated, three have fallen into the sea, and

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engineers predict that the entire village of 600 houses could disappear into the sea within the next few decades. Advancing seawater has contaminated Shishmaref's drinking water supply.

The Inuit and other Arctic people seem to find themselves constantly on the front line of mankind's assault on the planet. They have suffered from the release of toxics, such as mercury and PCBs, and experience the highest exposure to cancer-causing UVB radiation because of damage to the ozone layer. Climate change exacerbates these health threats, making the danger to the Inuit all the greater.

THE LEGAL BASIS OF THE PETITION

Although the United States is the world's largest emitter of greenhouse gases, it has not taken any meaningful reduction measures. Emissions have climbed steadily, despite a commitment by the United States under the 1992 UN Framework Convention on Climate Change to return its emissions to 1990 levels. The United States has rejected the Kyoto Protocol, which would have obligated it to reduce its emissions to 7% below 1990 levels.

The impacts of climate change are already being felt in many parts of the world, and in some regions, notably the Arctic, have shown themselves to be very dangerous. They pose a particular threat to indigenous communities, many of which are highly dependent on natural resources vulnerable to climate change, and few of which have the financial resources to adapt to loss of these resources and other perils. The failure of the United States to reduce its national emissions has contributed substantially to the harm being suffered by the Inuit and other communities. The United States accounts for approximately 25% of global emissions. If it cannot be held accountable for its emissions under international law, and particularly human rights law, then it stands to reason that no country can.

Such a claim will confront the IACHR with new and challenging questions, and providing a remedy will require some creative thinking, since ordering compensation or injunctive relief are beyond its powers. Nevertheless, because the impacts of climate change will result in severe violations of human rights—indeed, they already have—the IACHR and other human rights bodies must be prepared to grapple with and ultimately find remedies for these violations.

PROCEDURAL REQUIREMENTS OF THE IACHR

Standing

Any person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the IACHR, on their own behalf or on behalf of third persons, concerning alleged human rights violations. While it would be prudent to include at least one person or group of persons from the United States to ensure that the petition is accepted, the inclusion of others that reside outside U.S. territory would test the premise that any person or group, regardless of citizenship or national residence, ought to be able to petition the IACHR for redress for human rights violations by an OAS Member State.

Jurisdiction

If the accused state is party to the American Convention on Human Rights, that document, the Statute of the IACHR, and its Rules of Procedure establish jurisdiction and procedure. The United States is not a party to the Convention, but is a Member State of

the OAS. The Rules of Procedure of the IACHR and past practice recognize that the rights and obligations of the American Declaration of the Rights and Duties of Man, the foundational document of the OAS human rights system, apply.

Although there is no explicit territorial limitation on jurisdiction in the Declaration, the IACHR infers a limitation similar to the one spelled out in Article 1(1) of the Convention, “[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free exercise of those rights and freedoms...” The IACHR has stated, however, that it

“...does not believe...that the term ‘jurisdiction’ in the sense of Article 1(1) is limited to or merely coextensive with national territory. Rather, the Commission is of the view that a state party to the American Convention may be responsible under certain circumstances for the acts and omissions of its agents which *produce effects* or are undertaken outside that state’s own territory”² (emphasis added).

Thus, the IACHR recognizes that in certain circumstances states must protect the rights of people outside their territory from the effects of acts or omissions by their agents. While these effects will usually result from actions taken abroad, they include effects of actions taken domestically.

In other areas of international law, where approaches are typically more restrained and conservative than human rights law, tribunals have not shied away from holding states responsible for acts within their territory that cause harm to persons outside their territory or jurisdiction. In the well known *Trail Smelter Case*, for example, Canada was held responsible for transboundary air pollution that crossed the border into the United States. In its advisory opinion on the *Legality of the Threat of Use of Nuclear Weapons*, the International Court of Justice stated that “the existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.”³

Exhaustion of Domestic Remedies

In determining the admissibility of a petition, the IACHR Statute requires it to “verify, as a prior condition to the exercise of [its authority to accept a petition], whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.” The Commission has recognized a number of exceptions to the exhaustion requirement, including the absence of effective remedies and, in certain circumstances, the inability of the petitioner to exhaust remedies for lack of resources. The burden is on the respondent government to prove the existence of a domestic remedy and the failure to exhaust it.

RELEVANT RIGHTS PROTECTED BY THE DECLARATION

Rights contained in the Declaration that may give rise to complaints based on the adverse impacts of climate change include: the right to life and personal security (Art. I), the right to residence and movement (Art. VIII), the right to inviolability of the home (Art. IX), the right to the preservation of health and to well-being (Art. XI), the right to the benefits of

² Report N° 38/99, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 289 (1998), at para. 17.

³ *Legality of the Threat of Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, para. 29.

culture (Art. XIII), and the right to work and to fair remuneration (Art. XIV). The right to property seems particularly compelling. The IACHR regards it as fundamental, it is supported ardently by the United States, a breach can be objectively ascertained, and the remedy, compensation, is inherent in the right.

The IACHR has applied several other rights that would be relevant to the petition, including the non-derogable right of all peoples to their own means of subsistence and the right to freely dispose of natural resources. In addition, the IACHR has recognized that indigenous petitioners are entitled to special protections, especially in the case of threats to the environment on which their physical and cultural lives depend.

REMEDIES

The IACHR does not have the authority to require the United States to reduce its emissions of greenhouse gases or compensate for the effects. However, a favorable outcome to a complaint based on those effects could contribute significantly to global efforts to address climate change. The IACHR likely would encourage the parties to negotiate a solution. If that fails, it could undertake an independent investigation of the facts underlying the claim and issue a report, setting out its conclusions concerning the relationship between climate change and human rights. If the IACHR establishes human rights violations, it will prepare a report with recommendations and set a deadline by which the United States must report on the measures adopted to comply with the IACHR's recommendations.

Each significant phase of the IACHR's consideration of the claim would provide an opportunity to raise public awareness concerning the human rights implications of climate change. An IACHR report finding that climate change results in human rights violations would help bring a rights-based approach to climate change discussions. Governments or private individuals would welcome the ability to cite the IACHR's findings. Plaintiffs in domestic judicial proceedings could use the findings to supplement their claims (or, in some judicial systems, as an independent basis for a claim), and domestic tribunals could use them to justify favorable decisions.

CONCLUSION

The United States, the world's largest emitter of greenhouse gases, has refused to take meaningful action to curtail its emissions. Climate change caused by these emissions has seriously compromised the fundamental rights of the Inuit and other people of the Arctic, placing the ancient Inuit culture in peril. A report by the IACHR finding that the United States has violated the rights of the Inuit would have moral and political force that could help motivate political action and, if necessary, serve to support future litigation.